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No. 592

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

COCHEYSE J. GRIFFIN, ET AL., *Petitioners*

v.

COUNTY SCHOOL BOARD OF PRINCE EDWARDS COUNTY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MOTION FOR LEAVE TO FILE AND MEMORANDUM FOR THE NATIONAL EDUCATION ASSOCIATION AS AMICUS CURIAE

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MOTION FOR LEAVE TO FILE MEMORANDUM AMICUS CURIAE

The National Education Association of the United States respectfully moves for leave to file the annexed Memorandum Amicus Curiae.

Petitioners have consented to the filing of this Memorandum, as reflected in a letter filed with the Clerk. Respondents have not.

The National Education Association of the United States was chartered by Congress in 1906. With approximately 900,000 members and more than 8,000 local and state affiliates, the National Education Association is the voice of the teaching profession in America. For over half a century the National Education Association's purpose has been to improve public education in the United States. At its last annual convention, the membership passed a resolution which placed the National Education Association on record

as being "vigorously opposed" to "any movement which would diminish" "the priceless heritage of free public educational opportunity for every American."

The legal issue presented by this case must be decided in a broader context which gives consideration to the nature of universal free education in America. Because of movant's long history in and intimate contact with American education, it believes that it is peculiarily fitted to bring before the Court some of these historical and philosophical considerations, all as more fully detailed in the annexed Memorandum. These materials were not contained in the briefs below or in the certiorari papers and we understand that they will not be included in the briefs on the merits by the parties.

Respectfully submitted,

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MEMORANDUM FOR THE NATIONAL EDUCATION ASSOCIATION AS AMICUS CURIAE

The importance of free public education and its development as an American institution must obviously be given full consideration and great weight by the Court in determining whether petitioners are entitled to the relief they seek.[1]

Universal free education is so deeply imbedded in the American heritage that it is by now almost axiomatic. In earlier days, however, universal free education was an achievement eagerly sought and dearly won. This case might well serve to remind us that our public education system, now too often taken for granted, is a necessary foundation stone of democratic government, as it is of individual fulfillment. Moreover, those who are left without the instruction which our society commonly provides are deprived of the opportunity to lead a useful, purposeful life within the American social structure.

This is increasingly true in today's world in which education is necessary not only to insure an individual's ability to participate in the responsibilities of citizenship, but also to achieve his minimal social and economic status and even to function as a wage earner. Present-day society is marked by an explosion of knowledge, particularly in terms of science and technology. The uneducated individual is defenseless; he becomes a charge upon society. Only through universal opportunity for education can the society and the individual be assured of the essential ingredients of national prosperity and individual well-being.

Benjamin Franklin put the matter this way:

> The good Education of Youth has been esteemed by wise Men in all Ages, as the surest Foundation of the

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[1] *Cf. Brown* v. *Board of Education*, 347 U.S. 483, 493-4 (1954).

> Happiness both of private Families and of Commonwealths. . . . Capacities require Cultivation, it being truly with them, as with the best Ground, which unless well tilled and sowed with profitable Seed, produces only ranker Weeds.
>
> . . . an Ability to serve Mankind, one's Country, Friends and Family . . . is (with the Blessing of God) to be acquir'd or greatly encreas'd by true Learning; and should indeed be the great Aim and End of all Learning.[2]

In the words of a former Justice of this Court, James Wilson:

> . . . [T]he fate of states depends on the education of youth.[3]

Thomas Jefferson regarded free public education as the only "sure foundation [that] can be devised for the preservation of freedom and happiness".[4] Jefferson's concern was not abstract or transient; it was one of the abiding and practical interests of his life. In 1810, he wrote to Governor Tyler of Virginia:

> I have indeed two great measures at heart, without which no republic can maintain itself in strength. (1) That of general education, to enable every man to judge for himself what will secure or endanger his freedom, (2) to divide every county into hundreds, of such size that all the children of each will be within reach of a central school in it.[5]

This twofold aspect of education—as the foundation of

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[2] Benjamin Franklin, "Proposals Relating To The Education of Youth In Pensilvania" (1749), 2 The Writings of Benjamin Franklin (Smyth ed.) 388, 396.

[3] II The Works of James Wilson (Andrews ed.) 102.

[4] IV The Writings of Thomas Jefferson (Ford ed.) 268-269.

[5] IX The Writings of Thomas Jefferson (Ford ed.) 276-277, *Cf.* IX The Works of John Adams (Adams ed.) 540:

> There should not be a district of one mile square without a school in it, not founded by a charitable individual, but maintained at the expense of the people themselves. [Letter to John Jebb, London, Sept. 10, 1785]

individual happiness and the success of governments—was thus summarized by Woodrow Wilson:

> Popular education is necessary for the preservation of those conditions of freedom, political and social, which are indispensable to free individual development. . . . Without popular education, moreover, no government which rests upon popular action can long endure: the people must be schooled in the knowledge, and if possible in the virtues, upon which the maintenance and success of free institutions depend."[6]

Carrying the banner which that earlier Virginian, Thomas Jefferson had borne before him, Robert E. Lee wrote after the War between the States:

> The thorough education of all classes of the people is the most efficacious means, in my opinion, of promoting the prosperity of the South. The material interests of its citizens, as well as their moral and intellectual culture, depend upon its accomplishment.[7]

That pioneer in American educational history, Horace Mann, urged that "every human being" has an "absolute right . . . to an education", and that there is a "correlative duty of every government to see that the means of that education are provided for all."[8] As a nation, we are still committed to this proposition.[9]

The concept of free universal education in America had its roots in the same ferment which resulted in the Revolution of 1776. An essential element of the Founding Fathers' creed was that the foundation of the new system of self government must be an educated citizenry. Washington, in his farewell address, stated: "Promote, then as an object of primary importance, institutions for the general

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[6] Woodrow Wilson, The State (rev. ed., 1898) 638-639.

[7] Lee, *Recollections & Letters of General Robert E. Lee.* 211.

[8] Mann, Tenth Annual Report on Education Covering the Year 1846 (Massachusetts Board of Education) 112.

[9] See John W. Gardner, "National Goals in Education," submitted to the President's Commission on National Goals and published with its report, *Goals for America*, 81.

diffusion of knowledge. In proportion as the structure of a government gives force to public opinion it is essential that public opinion should be enlightened."[10] In 1779 a bill was introduced in the Virginia Legislature, drafted by Jefferson and Wythe, which was designed to establish a state public school system supported by taxes levied upon the public.[11] Jefferson considered this provision as "the most important bill in our whole Code."[12]

Thus the ideal was clearly set before the people early in our history. By the middle 1800's, the free public school movement had achieved sustained success. Massachusetts passed a general state school law in 1789 and achieved a true public school system in the 1830's.[13] By the 1850's Delaware, Vermont and Ohio had established state school systems. Pennsylvania was prevented from doing so only by a few counties which had not taken advantage of the optional provisions of that state's school law. In the 1860's California, Indiana, Michigan, New York, Connecticut and Rhode Island joined the growing number of states with their own public school systems.[14]

The adoption of a system of free public schools in the South was delayed somewhat by the alternative, and not wholly unsatisfactory, system of plantation schools. The development of a universal free educational opportunity also was hampered by the lack of a substantial middle class in the predominantly agricultural economy and by the tensions presaging the War between the States.[15] The

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[10] Washington's Farewell Address (Troy, 1812) 24. See generally, *The Unique Function of Education in American Democracy*, Educational Policies Commission of the NEA.

[11] Monroe, V Cyclopedia of Education 728; Cremin, *The American Common School, An Historical Conception*, 110.

[12] IV Writings of Thomas Jefferson (Ford ed.) 268-269.

[13] Cremin, *The American Common School, An Historical Conception* 87, 94.

[14] Good, *A History of American Education* 154; and see, generally, Cremin, *op. cit. supra.*

[15] See, generally, Cremin, *op. cit. supra.*

destruction and chaos which thereafter ensued served further to impair the ability of Southern states to provide public education for all. However, by 1876, Virginia as had most other Southern states, had made substantial progress toward the establishment of a truly free and universal public school system.[16]

By the turn of the century, over a hundred years of effort had succeeded in assuring the opportunity for a free public education for virtually every American child. Educational effort since that time has been directed toward the improvement and expansion of the scope and content of the education offered by the free public school system.

Since the establishment of universal free public education in the latter part of the nineteenth century, the concept has become so much a part of the American way of life that until the instant case, when respondents exercised what they deem to be their right to depart from it, adherence to this ideal was unanimous and unquestioned. The right to a free public education had become the unspoken assumption of all American parents and was transmitted by them even to their pre-school children. This was not something people debated and argued about; it was the assumed basis on which Americans planned their lives. Every legitimate expectation supported such an assumption. Here was a principle deeply imbedded in the American faith, universally adhered to for over half a century, recognized as an essential ingredient of meaningful democratic government, and as a necessary requisite to a useful and fulfilling life within the American social structure. To the extent that these legitimate expectations can be the basis of a right which this Court will recognize, petitioners are entitled to the opportunity of a free public education. The survival of democracy requires that every

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[16] Monroe, V Cyclopedia of Education 729.

state maintain a system of free public education and safeguard the education of all. The public school system is not expendable.

Respectfully submitted,

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